

COMPLIANCE WITH THE NEW REQUIREMENTS OF RCW 59.28

Information to Assist Owners of Federally Assisted Housing

➤ What is RCW 59.28 and why is it important to me as an owner of federally assisted housing?

Since 1989 Washington State law has required owners of federally assisted housing to give written notice to the tenants, local government and the Washington State Office of Community Development (OCD) before prepayment of a federally insured mortgage or loan or expiration of a rental assistance contract. This law is codified in RCW 59.28. It requires that owners of federally assisted housing give this notice at least twelve months before a prepayment or expiration of a rental assistance contract. The reason for this notice is two-fold. First, it will give local governments, housing agencies, and non-profit housing providers an opportunity to work with the owner to preserve the housing. Second, in the event that the project cannot be preserved, it will ensure that adequate time is available to minimize and mitigate the involuntary displacement of tenants that might result from the loss of this housing.

On March 31, 2000, RCW 59.28 was amended through the enactment of Substitute Senate Bill 6663. These amendments make several changes to RCW 59.28. The amendments require that written notice of the prepayment or expiration of the rental assistance contract be given to any local housing agency who would be responsible for administering tenant-based rental assistance to the tenants who would otherwise be displaced from his housing. The amendments also expand the type of information that the owner must include in the various notices required by RCW 59.28. The amendments also direct OCD to prepare written materials that the owner will distribute to affected tenants and that will assist the owner in complying with the notifications requirements of RCW 59.28. This handout provides this guidance.

Federally assisted housing means multifamily housing that is insured, financed, assisted or held by the Secretary of the U.S. Department of Housing and Urban Development (HUD) or the Secretary of the U.S. Department of Agriculture (USDA) under a variety of federal housing programs listed at RCW 59.28.020, such as project based Section 8 or USDA rural rental housing. **Prepayment of a federally insured or federally held loan** means payment in full of the loan, refinancing of the loan or voluntary cancellation of mortgage insurance, if any of those actions would cause the termination of any low income use restrictions. Low income use restrictions are broadly defined to refer to any limitations on who may reside in the housing or what rents may be charged. An owner must also **give twelve months notice prior to the expiration of any rental assistance contract regardless of whether the owner intends to renew the contract, unless the owner is exempt from this requirement as described below.**

➤ How do I know if I need to give notice?

Other than owners exempted from giving the notice (see below), **all owners of federally assisted housing must give notice twelve months in advance** of the prepayment of a federally insured or federally held loan ("prepayment") or the expiration of a federal rental assistance contract ("expiration"). An owner who fails to give this notice may not increase the rent, modify the terms of the tenancy or evict a tenant except as authorized by the federal assistance program applicable to the project prior to expiration or prepayment of the rental assistance contract or mortgage or loan until the owner provides the notice required by RCW 59.28. An owner may also be **liable for actual damages, statutory damages, court costs and reasonable attorney's fees**.

➤ Are any owners exempted from giving notice?

There are two exemptions from giving the notice under RCW 59.28.

First, **an owner of federally assisted housing does not need to give a notice of prepayment** if:

(a) the owner has entered into an agreement with a federal, state or local agency to continue existing low-income use restrictions or impose new low-income use restrictions that will ensure for at least **twenty (20) years** —

- (1) that the tenants will not be displaced from the housing except for good cause and
- (2) that the housing will continue to serve low- and very low-income families and persons in need of affordable housing;

AND

(b) the owner has

- (1) served notice of this agreement on the clerk of the city (or county, if the area is unincorporated) in which the property is located, on the public housing agency that would be responsible for administering tenant based rental assistance if tenants were displaced, and on OCD, all by regular and certified mail, and
- (2) posted a copy of the agreement in a conspicuous place at the building, where tenants are likely to see it, and that posted copy is kept intact and legible for the life of the agreement.

Second, **an owner of federally assisted housing does not have to give a notice of expiration** if:

(a) the owner has entered into an agreement with HUD or another federal, state or local agency to renew the rental assistance contract for at least five years, subject to the availability of appropriations;

AND

(b) that agreement itself does not expire within the next twelve months;

AND

(c) the owner has

- (1) served notice of this agreement on the clerk of the city (or county, if the area is unincorporated) in which the property is located, on the public housing agency that would be responsible for administering tenant based-rental assistance if tenants were displaced, and on OCD, all by regular and certified mail, and
- (2) posted a copy of the agreement in a conspicuous place at the building, where tenants are likely to see it, and that posted copy is kept intact and legible for the life of the agreement.

☞ If I do not fall under either of the exemptions and there will be an expiration or prepayment in connection with my building in a year, to whom do I give the notice of that expiration or prepayment?

At least twelve (12) months prior to the expiration or prepayment, **an owner of federally assisted housing must serve written notice of the expiration or prepayment date:**

- (1) on each tenant household residing in the housing;
- (2) on the clerk of the city (or county, if the area is unincorporated) in which the property is located;
- (3) on the public housing agency that would be responsible for administering tenant based-rental assistance if tenants were displaced;
- (4) on OCD; and
- (5) on each tenant household that moves into the housing after the initial notice has been given but before the expiration or prepayment and before the new tenant is asked to execute a rental agreement or required to pay any deposit.

☞ What information must these notices contain?

There are actually two types of notices required: one to tenants and one to the county or city, public housing agency and OCD. Samples of these notices are attached. The notices contain information that will help tenants and the agencies more fully understand and prepare for the owner's plans.

In **the notice to tenants**, the owner must state:

- (a) whether the owner (1) intends to prepay the mortgage or loan or allow the rental assistance contract to expire in order to operate the housing without any low-income use restrictions, (2) plans to renew the rental assistance contract subject to the availability of adequate appropriations, or (3) is seeking additional financing incentives or higher rents as a condition of remaining in the federal program;
- (b) the reason the owner plans on taking the action;
- (c) the owner's plans for the project, including timetables, deadlines, and specific federal, state or local agency approvals the owner must obtain;
- (d) the anticipated date of the prepayment or expiration;

- (e) the effect, if any, of the prepayment or expiration on the tenants' rent and other terms of their rental agreement; and
- (f) the fact that additional information will be served on the city or county, on the local public housing agency, and on OCD, and will be posted at the development.

The notice to tenants must also include **written information prepared by OCD explaining the legal rights, responsibilities and options of tenants** if there is a prepayment or an expiration where the owner does not renew the contract. A copy of this information for tenants and sample notice letter are attached. The notice letter requires the owner to fill in area-specific information regarding the local housing authority or agency, community action program and area agency on aging; this contact information is provided in the list of "Resources for Owners" included with this information.

A sample of the **notice to the city or county clerk, the local public housing agency and OCD** is attached. This notice must provide **the anticipated expiration or prepayment date** and must state (without disclosing the identities of affected tenants and of any applicants on the project's waiting lists):

- (a) The name, location and project number of the federally assisted housing and the type of assistance received;
- (b) the number and size of the units;
- (c) the age, race, family size and estimated incomes of the tenants who will be affected by the prepayment or expiration;
- (d) the current rents (the tenants' portion and the total rent) and projected rent increases for each affected tenant after the prepayment or expiration;
- (e) the availability and type, if any, of rental assistance after the prepayment or expiration;
- (f) the age, race, family size and estimated incomes of any applicants on the project's waiting list.

The notice to the city or county clerk, the public housing agency and OCD **must include a copy of the notice given to the tenants**. The notice to the city or county clerk, the public housing agency and OCD must also **be posted in a conspicuous place** at the development and must be maintained intact and legible for twelve (12) months.

➤ Do I need to do anything else to be in compliance with this law?

Upon request of a state or local agency, an owner must give that agency a copy of any **rent comparability study, market analysis or projected budget** submitted to HUD or any other federal agency in conjunction with the prepayment or expiration, along with any **physical inspection reports or capital needs assessments** completed by the owner or federal agency within the last three years.

Also, from the date of service of the notices of prepayment or expiration required by RCW 59.28 **until twelve (12) months have elapsed or the prepayment or expiration has occurred (whichever is later), the owner may not increase the rent on any units in the development or the share of rent paid by the tenants** above the amount previously authorized by the applicable federal assistance program or **evict any tenants** except in accordance with the provisions of the lease that was in place at the time of prepayment or expiration of the rental assistance contract.

If an owner of federally assisted housing prepays the mortgage or loan or permits the rental assistance contract to expire without renewal and continues to operate the property as residential housing, **the owner may not evict a tenant living in a unit on the property at the time of the prepayment or expiration** – unless the federal assistance program applicable to the project prior to the prepayment or expiration would have allowed an eviction.

➤ Why should I follow this law, and where can I go for advice?

Giving this information, as required by law, to tenants and to state and local public agencies is **better for both tenants and owners**. The more information the tenants and public agencies have, the fewer questions they will have for building owners and managers. Lack of knowledge leaves tenants scared and uncertain and leaves public agencies ill-prepared to provide assistance to those tenants. Inadequate information can lead to unnecessary vacancies or tenant turnover. Of course, even with information, tenants may be scared and uncertain about their future, but at least they will have the information that they need to better understand their options. Giving the notice can give tenants, state, and local government an opportunity to work with the owner to seek the resources the owner might need to remain in the federal housing program. The notice may also alert qualified housing agencies and non-profit organizations of the opportunity to purchase a building in order to preserve the subsidized housing resource. Giving these notices is just the right thing for an owner who cares about tenants to do.

Information about how vouchers will be handled should be available from local public housing agencies; a list of public housing agencies is attached. Information and technical assistance about the various options for preserving the housing for low income people – through existing federal programs, sale to preservation-motivated

purchasers, or other means – is available from the Washington Low Income Housing Network, the Affordable Housing Management Association and the Council for Affordable and Rural Housing; the contact information for these organizations is also attached.